

# ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF 21 PAGES

**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

1. DATE OF ORDER 05/14/2004		2. CONTRACT NO. (If any) DTMA1D02005		6. SHIP TO: Margaret D. Blum	
3. ORDER NO. TO0004		4. REQUISITION/REFERENCE NO.		a. NAME OF CONSIGNEE DOT/Maritime Administration, MAR-800	
5. ISSUING OFFICE (Address correspondence to)  DOT/Maritime Administration, MAR-380 400 Seventh Street, SW., Room 7310  Washington DC 20590				b. STREET ADDRESS 400 Seventh Street, SW., Room 7214	
				c. CITY Washington	d. STATE DC
				e. ZIP CODE 20590	
7. TO:				f. SHIP VIA	
a. NAME OF CONTRACTOR Dave London/Joe Smith				8. TYPE OF ORDER	
b. COMPANY NAME I.M. SYSTEMS GROUP, INC.				<input type="checkbox"/> a. PURCHASE	
c. STREET ADDRESS 3183A Beaver-Vu Drive				REFERENCE YOUR:	
d. CITY Beavercreek				Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.	
e. STATE OH		f. ZIP CODE 45430		<input type="checkbox"/> b. DELIVERY - Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.	
9. ACCOUNTING AND APPROPRIATION DATA - 69 - 1750 - 1 - 04 - PA - - 180000 - PAB002 - - 2523 - - - - -				10. REQUISITIONING OFFICE	

11. BUSINESS CLASSIFICATION (Check appropriate box(es)) <input checked="" type="checkbox"/> a. SMALL <input type="checkbox"/> b. OTHER THAN SMALL <input checked="" type="checkbox"/> c. DISADVANTAGED <input type="checkbox"/> d. WOMEN-OWNED							
12. F.O.B. POINT Destination		14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) 09/28/2004		16. DISCOUNT TERMS 10 days % 20 days % 30 days % days %	
13. PLACE OF							
a. INSPECTION	b. ACCEPTANCE						

## 17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)		QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
	SEE LINE ITEM DETAIL						
SEE BILLING INSTRUCTIONS ON REVERSE	18. SHIPPING POINT	19. GROSS SHIPPING WEIGHT	20. INVOICE NO.				17(h) TOT. (Cont. pages)
	21. MAIL INVOICE TO: John G. Hoban						
	a. NAME DOT/Maritime Administration, MAR-330						
	b. STREET ADDRESS (or P.O. Box) 400 Seventh Street, SW., Room 7325			\$144,132.17		17(i) GRAND TOTAL	
	c. CITY Washington	d. STATE DC	e. ZIP CODE 20590				

22. UNITED STATES OF  
AMERICA BY (Signature)

*Tracey L. Ford*

23. NAME (Typed)

Tracey L. Ford

TITLE: CONTRACTING/ORDERING OFFICER

**PAGE NO.** 2 of 21

## RECEIVING REPORT

SHIPMENT	PARTIAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REP.	DATE
NUMBER	FINAL				
TOTAL CONTAINERS	GROSS WEIGHT	RECEIVED AT	TITLE		

[illegible]

**ORDER FOR SUPPLIES OR SERVICES  
SCHEDULE - CONTINUATION**

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**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

DATE OF ORDER 05/14/2004		CONTRACT NO. DTMA1D02005		ORDER NO. TO0004		
ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
0001	<p><i>This Task Order is considered an undefinitized Contract Action until negotiations are completed and a modification is issued to definitize this Task Order.</i></p> <p>Contractor to provide continued development support for the Port of Anchorage Intermodal Expansion Project web based Contract Management System. The Contractor is directed to perform work identified during the IT Program Summit on March 26, 2004, specifically continuation of development and integration of financial pages, automated email alerts, integration of EIS, completion of the CRT process, and completion of TO/Mod process. Specific SOW items will be negotiated and definitized IAW the schedule set forth in Section I.2. Billing of labor hours during the period of performance prior to definitization shall be at the established contract rates.</p> <p><i>Delivery Date      Start Date      End Date</i> 09/28/2004      04/10/2004      09/28/2004</p> <p><i>Accounting Data: Partial funding is hereby provided.</i> 69X1750 1 04 PA 180000 PAB002 2523 - \$25,555.79 69X1750 9 04 210 180000 X000445 2523 M-4-0445 - \$118,576.38 <i>This is a firm fixed price Task Order and shall not exceed the estimated value of \$144,132.17</i></p>	1.00	NTE	144,132.170	144,132.17	

**TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17i)** ➡ \$144,132.17

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## SECTION D -- PACKAGING AND MARKING

### D.1 MARKING OF REPORTS

All reports shall be identified with the contract number, the contract line item number, task order number, and name of ship, as applicable.

### D.2 MARKING REQUIREMENTS

Each package shall be marked with the appropriate delivery address, contract number, and name and address of the contractor, for return address purposes, on the outside of the packing container.

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## SECTION E -- INSPECTION AND ACCEPTANCE

### E.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

Clause	Title	Date
52.246-04	Inspection Of Services- Fixed Price	August 1996

### E.2 1252.246-80 DELEGATION OF INSPECTION AND ACCEPTANCE FEBRUARY 2000

The Contracting Officer's Technical Representative shall be delegated the responsibility and authority to conduct inspection and acceptance duties for this contract. (See COTR clause in Section G).

### E.3 FINAL ACCEPTANCE

Final acceptance of all services for each Task Order issued under this contract shall be made only upon certification of the Final Invoice as defined in the invoicing provisions contained in Section G. Such certification shall be made by the Contracting Officer or the designated representative.

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## SECTION F -- DELIVERIES OR PERFORMANCE

### F.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

Clause	Title	Date
52.242-15	Stop-Work Order	August 1989
52.247-34	F.O.B. Destination	November 1991

### F.2 PERIOD OF PERFORMANCE

The period of performance for this Task Order is for a period of April 10, 2004 through September 28, 2004.

### F.3 TYPE OF CONTRACT

This Task Order is issued as a firm fixed price order in accordance with procedures set for in FAR 16.202.

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## SECTION G -- CONTRACT ADMINISTRATION DATA

### G.1 ADDRESS OF CORRESPONDENCE

All correspondence, except as otherwise specified, shall be directed to the Contracting Officer at the following address:

U.S. Department of Transportation  
Maritime Administration  
Office of Acquisition, MAR-380  
400 7th Street, S.W., Room 7310  
Washington, DC 20590  
ATTN: Tracey L. Ford  
Contracting Officer  
Internet Address: tracey.ford@MARAD.dot.gov  
Phone No: (202) 366-1744 FAX: (202) 366-3237

### G.2 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

a. The Contracting Officer's Technical Representative (COTR) is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.

b. The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer. The COTR may designate assistant COTR(s) to act for him by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor.

c. The COTR for this Task Order will be:

Mrs. Margaret Blum  
Associate Administrator for Port, Intermodal and Environmental Activities  
Maritime Administration  
400 7th Street, S.W., Room 7214  
Washington, DC 20590  
Telephone No.: 202-366-4721  
Email: Maggie.Blum@marad.dot.gov

The Assistant COTR for this Task Order will be:

Mr. Scott Davies  
Maritime Administration  
Office of Acquisition, Mar-800  
400 7th St., SW., Room 7214  
Washington, DC 20590  
Telephone No.: 202-366-2763  
Email: Scott.Davies@marad.dot.gov

d. The COTR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing.



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### G.3 INVOICE REQUIREMENTS

- a. Invoices shall be submitted in an original and 3 copies to:

U.S. Department of Transportation  
Maritime Administration  
Division of Accounting Operations, MAR-333  
400 7th Street, S.W., Room 7325  
Washington, DC 20590

- b. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (1) Name of the business concern.
- (2) Invoice date.
- (3) Contract number, or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (4) Description, price and quantity of supplies and services actually delivered or rendered.
- (5) Shipping and payment terms.
- (6) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.
- (7) Other substantiating documentation or information as required by the contract.

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## SECTION H -- SPECIAL CONTRACT REQUIREMENTS

### H.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

Clause	Title	Date
1252.223-81	STANDARDS OF EMPLOYEE CONDUCT	February 2000
1252.247-82	SUPERVISION	February 2000

### H.2 52.217-09 OPTION TO EXTEND THE TERM OF THE CONTRACT MARCH 2000

(a) The Government may extend the term of this contract by written notice to the Contractor within 60 days; provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 before the contract expires. The preliminary notices does not commit the Government to an extension.

### H.3 CONTRACT NOT AFFECTED BY ORAL AGREEMENT

No oral agreement of any person shall modify or otherwise affect the Scope of Work or other terms and conditions, as herein stated. All modifications shall be in writing by the Contracting Officer.

### H.4 KEY PERSONNEL

(a) The Contractor shall assign to this Task Order the following Key Personnel:

Project Manager (1 person)  
Senior Engineer (2 persons)  
Junior Engineer (4 persons)

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any part of these events and provide the information requirement by paragraph (c) below. After the initial 90 day period, the Contractor shall submit the information requirement by paragraph (c) to the Contracting Officer at least 15 days prior to mailing any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(d) See also Transportation Acquisition Regulation (TAR) clause 1252.215-70, Key Personnel and/or Facilities.

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## H.5 TRAVEL REQUIREMENTS

Travel, other than local, required by and performed by the Contractor in direct performance of this Contract will be reimbursed on a reasonable, actual, allowable basis, in accordance with the Federal Travel Regulations. Travel costs may include transportation, subsistence and lodging. The Contractor shall use only economy fare accommodations (coach or tourist) while performing travel under this contract, unless otherwise authorized. All supporting cost documentation must be provided with invoices for reimbursement for all travel performed on a reimbursement basis under this contract.

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## SECTION I -- CONTRACT CLAUSES

### I.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

Clause	Title	Date
1252.209-70	Disclosure of Conflicts of Interest	October 1994
1252.215-70	Key Personnel and/or Facilities	October 1994
1252.217-74	Subcontracts	October 1994
1252.237-70	Qualifications of Employees	October 1994
1252.242-73	Contracting Officer's Technical Representative	October 1994
52.202-01	Definitions	December 2001
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	April 1984
52.203-06	Restrictions On Subcontractor Sales To The Government	July 1995
52.203-07	Anti-Kickback Procedures	July 1995
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	January 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	January 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	June 2003
52.204-01	Approval of Contract	December 1989
52.204-04	Printing/Copying Double-Sided on Recycled Paper	August 2000
52.209-06	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	July 1995
52.211-06	Brand Name or Equal	August 1999
52.215-02	Audit and Records--Negotiation	June 1999
52.215-08	Order of Precedence--Uniform Contract Format	October 1997
52.215-14	Integrity of Unit Prices	October 1997
52.215-19	Notification of Ownership Changes	October 1997
52.216-24	Limitation Of Government Liability	April 1984
52.217-08	Option To Extend Services	November 1999
52.219-14	Limitations On Subcontracting	December 1996
52.219-16	Liquidated Damages-Subcontracting Plan	January 1999
52.219-17	Section 8(a) Award	December 1996
52.219-25	Small Disadvantaged Business Participation Program - Disadvantaged Status Reporting	October 1999
52.222-01	Notice To The Government Of Labor Disputes	February 1997
52.222-03	Convict Labor	June 2003
52.222-21	Prohibition of Segregated Facilities	February 1999
52.222-26	Equal Opportunity	April 2002
52.223-02	Clean Air And Water	February 2000
52.223-06	Drug Free Workplace	May 2001
52.223-14	Toxic Chemical Release Reporting	August 2003
52.227-01	Authorization and Consent	July 1995
52.227-03	Patent Indemnity	April 1984
52.227-21	Technical Data Certification, Revision, and Withholding of Payment--Major Systems	January 1997

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52.227-23	Rights to Proposal Data (Technical)	June 1987
52.229-03	Federal, State And Local Taxes	April 2003
52.230-02	Cost Accounting Standards	April 1998
52.232-22	Limitation Of Funds	April 1984
52.232-23	Assignment Of Claims	January 1986
52.232-24	Prohibition of Assignment of Claims	January 1986
52.232-25	Prompt Payment	October 2003
52.232-34	Payment by Electronic Funds Transfer--Other than Central Contractor Registration	May 1999
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information	May 1999
52.233-01	Disputes	July 2002
52.233-03	Protest After Award	August 1996
52.242-01	Notice of Intent to Disallow Costs	April 1984
52.242-04	Certification of Final Indirect Costs	January 1997
52.242-13	Bankruptcy	July 1995
52.244-02	Subcontracts (Cost-Reimbursement and Letter Contracts)	August 1998
52.244-06	Subcontracts for Commercial Items and Commercial Components	April 2003
52.245-01	Property Records	April 1984
52.245-04	Government-Furnished Property (Short Form)	June 2003
52.246-25	Limitation If Liability--Services	February 1997
52.248-01	Value Engineering	February 2000
52.249-04	Termination For Convenience Of The Government (Services) (Short Form)	April 1984
52.249-08	Default (Fixed-Price Supply and Service)	April 1984
52.252-02	Clauses Incorporated By Reference	February 1998
52.253-01	Computer Generated Forms	January 1991
TEXT	52.282-8 Discounts for Prompt Payment	

## I.2 52.216-25 CONTRACT DEFINITIZATION

OCTOBER 1997

(a) A firm fixed price definitive Task Order is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the task order, (2) all clauses required by law on the date of execution of the definitive task order, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a firm fixed price proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is June 30, 2004. This consists of the following:

1. By May 21, 2004, Contractor shall submit revised proposal, to include the following:
  - a. Detailed statement of work and schedule for completion, of all task to be completed during the period of performance.
  - b. Description of Travel. To include destination, number of staff attending and travel itinerary.
  - c. Detailed Statement of Work for the services being provided by the Accounting Process Consultant.
  - d. Proposed Labor Categories, Labor Hours and Labor Rates to be charged during this period of performance.
2. Begin Negotiations no later than June 1, 2004.
3. Definitize Task Order no later than June 30, 2004.
4. The Government's maximum liability during this definitization period shall not exceed 85% percent of the total ceiling price of \$144,132.17. This maximum liability shall not exceed \$122,512.34.

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5. If necessary, additional funds may be added to this Task Order upon completion of negotiations or sooner, if deemed necessary by the Contracting Officer.

(c) If agreement on a definitive task order to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by--

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

### I.3      52.216-26      PAYMENTS OF ALLOWABLE COSTS BEFORE      DECEMBER 2002 DEFINITIZATION

(a) Reimbursement rate. Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; provided, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) Limitation of reimbursement. To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) Invoicing. Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) Allowable costs. For the purpose of determining allowable costs, the term "costs" includes--

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

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(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made--

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(f) Audit. At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be--

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

#### I.4 52.217-09 OPTION TO EXTEND THE TERM OF THE CONTRACT MARCH 2000

(a) The Government may extend the term of this task order by written notice to the Contractor within 60 days; provided that the Government shall give the contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years and 6 months..

#### I.5 52.227-14 RIGHTS IN DATA--GENERAL JUNE 1987

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to

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enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based



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on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be

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made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) Reserved.

(3) Reserved.

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

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I.6 52.227-18 RIGHTS IN DATA--EXISTING WORKS

JUNE 1987

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

I.7 52.232-18 AVAILABILITY OF FUNDS

APRIL 1984

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

I.8 52.243-07 NOTIFICATION OF CHANGES

APRIL 1984

(a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing, within 5 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--

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- (i) What contract line items have been or may be affected by the alleged change;
  - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
  - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.
- (c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall countermand any action which exceeds the authority of the SAR.
- (d) Government response. The Contracting Officer shall promptly, within 5 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--
- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
  - (2) Countermand any communication regarded as a change;
  - (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
  - (4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments. (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--
- (i) In the contract price or delivery schedule or both; and
  - (ii) In such other provisions of the contract as may be affected.
- (2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

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